IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 3, 2004 Session

LAUREL VALLEY PROPERTY OWNERS ASSOCIATION, INC. v. JAMES P. HOLLINGSWORTH, III, ET AL.

Appeal from the Circuit Court for Blount County
No. E-18786 W. Dale Young, Judge

No. E2003-01936-COA-R3-CV - FILED JUNE 29, 2004

Laurel Valley Property Owners Association, Inc. ("the Plaintiff") filed a declaratory judgment action against James P. Hollingsworth, III and others pursuant to Tenn. Code Ann. § 29-14-101 *et. seq.* for a determination of the "right[s] and responsibilities of the parties" with respect to a purported easement over private roads owned either by the Plaintiff or a non-party to this case, Richard G. Heinshon. The trial court determined that Mr. Hollingsworth and the other defendants did not have a right to traverse or otherwise use the roads. As a consequence of this holding, the trial court entered a permanent injunction and ordered the erection of a permanent barrier on the defendants' property. We affirm in part and reverse in part.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part; Reversed in Part; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

L. Lee Kull and Irma G. Freestate, Maryville, Tennessee, for the appellants, James P. Hollingsworth, III, Sallie Hollingsworth, Tennessee Mountain Limited Partnership, Tennessee Greystone Limited Liability Company, Laurel Valley Investments, Inc., and Richard Gross.

Melanie E. Davis, Maryville, Tennessee, for the appellee, Laurel Valley Property Owners Association, Inc.

OPINION

I.

In 1986, Regal Real Estate Company ("RREC") began development of a controlled access community in the Laurel Valley area of Blount County. Mr. Heinshon, vice president of RREC,

served as project manager for the development. RREC built a golf course and restaurant and sold residential lots in Laurel Valley.[1] In 1989, Mr. Hollingsworth approached RREC about purchasing land from it. On October 16, 1989, RREC sold 108.49 acres ("the Hollingsworth tract") to Mr. Hollingsworth. The Hollingsworth tract lies generally to the south of the Laurel Valley residential development – the development with which the plaintiff is associated.

According to Mr. Heinshon's deposition, RREC sold the land to Mr. Hollingsworth without access to Laurel Valley. Mr. Heinshon testified that the land was sold with the agreement that Mr. Hollingsworth's "only easement would be through what is called Lee Crier Road." Lee Crier Road is a county-maintained road that crosses over "[m]aybe a quarter mile" of property that is owned by Steve Vananda, a nonparty to this case.

In order to show Mr. Hollingsworth the land, Mr. Heinshon claims that they entered the property via Lee Crier Road and crossed over the Vananda tract. Mr. Heinshon said that they did not enter via the roads within Laurel Valley because they "were impassable and did not exist." Mr. Heinshon said that the entrance to Laurel Valley at that time was little more than a logging trail that could only accommodate foot traffic.

As previously indicated, the Hollingsworth tract is located to the south of Laurel Valley. Cooper Hollow, a parcel of land that Mr. Heinshon owns, lies between Laurel Valley and the Hollingsworth tract. The Vananda tract is located to the east of the Hollingsworth tract. The purported easement at issue in this case runs from the Hollingsworth tract through Cooper Hollow on Cooper Hollow Road and then to the private roads that the Plaintiff owns in Laurel Valley. The Plaintiff does not own Cooper Hollow Road. The Plaintiff introduced the deposition of R.A. Tiebout, the President of the Laurel Valley Property Owners Association and a retired Marine Coups military engineer, who described the purported easement as a path that is essentially "an old, grown up logging trail" that "is not fit for travel by SUV or car and [that] would be difficult to travel by four-wheeler." He went on to describe the path as "extremely steep and littered with large, heavy rocks and other obstructions that would impede travel."

In 1992, Mr. Hollingsworth approached Mr. Heinshon about obtaining an easement through an area known as Powell Ridge. He also sought to purchase additional acreage adjacent to the Hollingsworth tract. Mr. Hollingsworth eventually purchased approximately 52 acres in Cooper Hollow. In the sale, Mr. Hollingsworth purportedly obtained an exclusive easement through Powell Ridge; however, Mr. Heinshon testified that the exclusive easement was limited to the 52 acres and did not include the Hollingsworth tract.

Mr. Hollingsworth eventually conveyed 24 of the approximately 52 acres to Mr. Heinshon. RREC subsequently foreclosed on the remaining 28 acres because Mr. Hollingsworth defaulted on the promissory note. As a result of the foreclosure, Mr. Heinshon claims that Mr. Hollingsworth lost

[1] White Oak Realty handled the sale of many lots for RREC.

the exclusive easement through Powell Ridge. However, in the case of *White Oak Realty v. Laurel Valley Invs., Inc.*, Mr. Hollingsworth successfully petitioned the court to set aside the foreclosure.

In 1998, pursuant to an agreed judgement with RREC in a case styled *Laurel Valley Prop. Owners Ass'n v. Heinshon*, the Plaintiff obtained ownership of the private roads in Laurel Valley. RREC retained an easement under the agreed judgment, which states, in pertinent part, as follows:

> RREC keeps and retains for itself, its successors and assigns, the permanent easement and right under and over all of said described roads and rights-of-way for access, egress, regress and crossing and access to all of the same and to all utility easements to any and all properties now owned by RREC.
>
> * * *
>
> The use of roads and rights-of-way by all parties, their successors, assigns, heirs, agents and contractors shall be reasonable. Reasonable is described as the present daily use and uses over the past eight years.

(Numbering in original omitted).

On March 7, 2001, the Plaintiff filed a declaratory judgment action against Mr. Hollingsworth, James P. Hollingsworth, Jr., and Sallie Hollingsworth.[2] The Plaintiff averred that the Hollingsworths were "taking steps to connect the Hollingsworth tract to the Laurel Valley roadways without right or permission." The Plaintiff contended that

> [s]pecifically, [the Hollingsworths] have cleared brush and begun to make a road over the Hollingsworth tract to connect to the Plaintiff's roadways which when completed will allow access to the [Plaintiff's] road system. Culverts are being installed and heavy machinery is being used to clear the roadway. At the present time, a sport utility vehicle could easily make the crossing to access [the Plaintiff's] roads due to the road work done by [the Hollingsworths].

The Plaintiff argued that "such access would constitute a trespass on its private property" and that any claimed easement "would be severely and improperly overburdened by allowing such access." Further, the Plaintiff averred that the security of their controlled access community would be breached if the Hollingsworths' actions were allowed. The Plaintiff asked the trial court (1) to prohibit the Hollingsworths from accessing the Laurel Valley roads; (2) to order the erection of a

[2] James P. Hollingsworth, Jr. died just over a week after the declaratory judgment action was filed. As a result, his name was subsequently removed from the style of the case.

permanent barrier to "prohibit such access"; (3) to issue a temporary injunction against the Hollingsworths' actions; and (4) to order the Hollingsworths to erect a temporary barrier.

Mr. Hollingsworth answered and averred, among other things, that the Plaintiff's property is "subject to the right of way easement deed recorded in Misc. Volume 95 Page 752, which is to the benefit of [the Hollingsworths] and successive record Owners." The purported easement would allow the Hollingsworths to cross over the following property: the Hollingsworth tract; seven-tenths of a mile (.7) over Cooper Hollow Road; and one-and-seven-tenths (1.7) of a mile over private roads in Laurel Valley that the Plaintiff owns.

On July 25, 2001, the trial court entered an order granting the Plaintiff a temporary injunction and requiring the Hollingsworths to erect a temporary barrier *on their property*. On January 30, 2002, the Plaintiff filed an amended motion for declaratory judgment, claiming that additional defendants must be added in order to determine the ownership of the Hollingsworth tract. The motion contends that Mr. Hollingsworth is the record owner according to the Blount County Register of Deeds; however, so the motion contends, Mr. Hollingsworth asserted during discovery that he did not actually own the property.

Approximately two weeks later, the trial court granted the Plaintiff's motion to include with the Hollingsworths as defendants Tennessee Mountain Limited Partnership, Tennessee Greystone Limited Liability Company, Laurel Valley Investments, Inc., and Richard Gross (all of the defendants are collectively referred to herein as "the Defendants").[3] On June 26, 2002, the Plaintiff requested that the trial court either (1) dismiss the Defendants claim of easement by necessity or (2) order the Defendants "to add as parties any other property owners upon which any easement by necessity could practically be construed." After a hearing on August 2, 2002, the trial court granted the Plaintiff's motion to dismiss the Defendants' "necessity claim"; however, the trial court gave the Defendants 30 days "to join any other appropriate landowners as parties" if they chose "to pursue a defense or claim of necessity." The trial court denied the Defendants' motion to alter or amend the order.

On October 16, 2002, the Plaintiff filed a motion for summary judgment, along with numerous depositions and affidavits. The Plaintiff argued that "the Defendants can not [sic] legally support any basis for the easement they desire under theories of express grant, prescription, or easement by implication: the theories they have identified as entitling them to the easement in their discovery responses."

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[3] Mr. Hollingsworth explained the ownership history of the Hollingsworth tract via his deposition. He explained that, sometime after he purchased the property, he and his wife conveyed ownership of the Hollingsworth tract to Laurel Valley Investments, Inc. Mr. Hollingsworth's mother was the sole shareholder of Laurel Valley Investments, Inc., and his grandfather was the director. Subsequently, Mr. Hollingsworth's mother assigned her shares to Rick Gross, a Florida attorney, who now holds the shares as trustee. According to Mr. Gross's deposition, Tennessee Mountain Limited Partnership is the beneficiary of the trust, and Mr. Hollingsworth and Mr. Gross serve as Tennessee Mountain's limited partners. Mr. Gross also stated that Tennessee Greystone, L.L.C. is a one percent general partner of Tennessee Mountain.

Mr. Gross testified via deposition that the Defendants have a right to the easement in question as a result of the court order reversing the foreclosure of the 28 acres that Mr. Hollingsworth was making payments on. Mr. Gross maintains that

> the easement at issue is not described in this Warranty Deed [on page 857] in the manner that it is in 1508B. That's why there is a reformation, and we have the Agreed Order with respect to 1508B.
>
> * * *
>
> [T]he reformed corrected easement is the easement that actually has been used always and is described as 1508B in 1508B.

The Plaintiff also presented the affidavit of Rob Gratigny, a property attorney in Knoxville, who addressed the claims Mr. Gross made in his deposition. Mr. Gratigny stated that the Defendants do not have a legal basis to claim the easement in question. The pertinent provisions of his affidavit are quoted as follows:

> Based on my review of [documents that the Defendants identified as relevant to their claim of an easement], I can find no basis for a grant of easement of record in the Blount County Register of Deeds Office. The Exclusive Easement document located at Misc. Book 95, Page 752 does not give access to the 108 acre tract. . . .
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> This grant was further released in a document of record at Release Volume 56, Page 473 . . . .
>
> I have reviewed Orders concluding a case styled *White Oak Realty, et al. v. Laurel Valley Investments, Inc., et al.,* Blount County Chancery Court No. 96-026 which attempt to "reform" this Exclusive Easement document to correspond with the document of record in Map File 1508B at the Blount County Register of Deeds Office. I have reviewed Map 1508B and Note 6. This document does not allow ingress and egress except to shown platted tracts. The shown platted tracts do not include the 108 acre tract owned by the Defendants in this cause. . . .
>
> Furthermore, based on my knowledge as a title attorney, I would submit that if the purported Order attempts to incorporate Map File 1508[B], it also incorporates the Notes on this recorded plat.

> Accordingly, I would conclude that even if it were appropriate to so extend the easement, Map File 1508[B] does not give the Defendants the right to use the easement for ingress and egress to its property.
>
> In looking at all of the documents that I have examined at the Register of Deeds Office and in the file of this cause, I would conclude that no easement exists of record that would allow the Defendants the access over Laurel Valley roads onto the 108 acre tract owned by the Defendants.

(Numbering in original omitted).

The Plaintiff also presented the deposition of Rick Younger, a land surveyor in Knoxville. Mr. Younger confirmed that Mr. Hollingsworth received an easement over Lee Crier Road through the Vananda tract when he purchased the Hollingsworth tract. Mr. Younger testified that

> [t]his [Vananda easement] was the one that was used, and I think it's the one everybody's still using now. It was the only existing road. It's just the easiest way to get from the country road basically to the property.

Mr. Younger supported this assertion by citing to note number nine on a land survey he prepared, which states that the "Property [is] served by fifty foot easement as shown by plat by MCI Engineers titled Vananda hundred acres." Mr. Younger also testified that the exclusive easement through Powell Ridge, which included Cooper Hollow road, was only intended to serve the approximately 52 acres to the north of the Hollingsworth tract. Mr. Hollingsworth admitted in his deposition, which the Plaintiffs introduced, that a county road[4] is accessible across the Vananda tract and that it is located a mere one "hundred feet" from the Hollingsworth tract.

In response to the Plaintiff's motion for summary judgment, the Defendants filed a statement of undisputed material facts and, separately, a motion to dismiss for lack of standing. The Defendants did not introduce a statement of disputed facts or any countervailing or additional affidavits in response to the Plaintiff's motion.

On March 3, 2003, the trial court granted the Plaintiff's motion for summary judgment and denied the Defendants' motion to dismiss. The trial court found that

> the facts as set forth in the Plaintiff's Statement of Undisputed Facts are not disputed in the record, that no statement setting forth disputed material facts was filed pursuant to [Tenn. R. Civ. P.] 56.03, that no countervailing affidavits were filed in response to Plaintiff's Motion,

[4]The record suggests that the county road that Mr. Hollingsworth is referring to is Lee Crier Road.

> that Defendants are not entitled to an easement over or use of Plaintiff's roads to access the ±108 acre tract at issue in this litigation, and that the Plaintiff is entitled to the relief sought in its Complaint.
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> * * *
>
> Specifically, the Court DECLARES that the Defendants have no right to use the private roads of the Laurel Valley Property Owners Association to access their ±108 acre tract of land at issue in this case . . . .

The trial court also imposed a permanent injunction and ordered the Defendants to erect a permanent barrier on the Defendants' property.

II.

The issues raised in this appeal, as taken verbatim from the Defendants' brief, are as follows:

> 1. Whether the trial court erred in granting "summary judgment to [the] Plaintiff[] when [the] Defendants, by agreement, have an easement through Cooper Hollow Road."
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> 2. Whether the trial court erred in granting "summary judgment to [the] Plaintiff[] when [the] Defendants have an easement by implication over the roads of the Laurel Valley Property Owners Association."
>
> 3. Whether the trial court erred in granting "summary judgment to [the] Plaintiff when the Defendants have an easement by prescription."
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> 4. Whether the trial court erred in granting "summary judgment to the Plaintiff[] when the Defendants have paid road maintenance fees."
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> 5. Whether the trial court erred in granting "summary judgement to [the] Plaintiff[] when the Court's own Order preserves the use of this road for [the] Defendants."
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> 6. Whether the trial court erred in failing "to dismiss [the] Plaintiff's suit, for lack of standing."

7. Whether the trial court erred in failing "to dismiss [the] Plaintiff's suit, for failure to plead a justiciable issue."

8. Whether the trial court erred in requiring the "Defendants to erect a barrier on their own property."

Since summary judgment presents a pure question of law, our review is *de novo* with no presumption of correctness as to the trial court's judgment. ***Gonzales v. Alman Constr. Co.***, 857 S.W.2d 42, 44-45 (Tenn. Ct. App. 1993). In deciding whether a grant of summary judgment is appropriate, courts are to determine "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. When presented with a summary judgment motion, the trial court "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." ***Byrd v. Hall***, 847 S.W.2d 208, 210-11 (Tenn. 1993). If there is a dispute as to any material fact, the motion for summary judgment must be denied. ***Id.*** at 211. A material fact is one that must be decided in order to resolve the claim or defense at which the motion is aimed. ***Id.*** The moving party bears the burden of proving "that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law." ***Webber v. State Farm Mut. Auto. Ins. Co.***, 49 S.W.3d 265, 269 (Tenn. 2001) (citations omitted); *see also* Tenn. R. Civ. P. 56.04. Upon making a "properly supported motion," the moving party's "burden shifts to the nonmoving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact." ***Id.***

III.

A.

The Defendants first argue that the trial court erred in granting summary judgment against them because they have an easement by agreement.[5] The Defendants contend that, pursuant to an

[5]We note that the Defendants have failed to comply with Tenn. R. App. P. 27(a)(7) with respect to this issue, along with their fourth, sixth, and eighth issues. Tenn. R. App. P. 27(a)(7) states that

> [t]he brief of the appellant *shall* contain under appropriate headings and in the order here indicated:
>
> * * *
>
> (7) An argument, which may be preceded by a summary of argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, *with citations to the authorities and appropriate references to the record* (which may be quoted verbatim) relied on; . . . .

(Emphasis added). We will consider these issues despite the deficiencies in the Defendants' brief.

agreement with Mr. Heinshon "which settled a Blount [County] Chancery Court case,[6] the Defendants have every right to use the Cooper Hollow Road[,] and provisions were even made for a joint Maintenance Agreement for that road." The Defendants maintain that Mr. Heinshon owns Cooper Hollow Road and that their agreement with him "certainly disputes the Plaintiff's bare allegation that [the] Defendants cannot utilize Cooper Hollow Road."

The Plaintiff argues that the alleged agreement is embodied in the exclusive easement found at Misc. Record Book Vol. 95, Page 752 at the Register of Deeds Office in Blount County. According to the Plaintiff, Mr. Heinshon signed the document on behalf of RREC; however, the Plaintiff maintains that the exclusive easement was subsequently released. Even if the exclusive easement was not released, the Plaintiff contends that

> the metes and bound description given on this document does not give access all the way to the Defendants' 108 acres. Instead, it stops short and goes only to the 'x' indicated on the map attached as Exhibit 5 to [Mr. Youngers' deposition].

We find the Plaintiff's argument persuasive. Along with its motion for summary judgment, the Plaintiff presented an affidavit from Mr. Gratigny, a property attorney, who stated, in pertinent part, that

> I can find no basis for a grant of easement of record in the Blount County Register of Deeds Office. The Exclusive Easement document located at Misc. Book 95, Page 752 does not give access to the 108 acre tract.
>
> This grant was further released in a document of record at Release Volume 56, Page 473 . . . .
>
> * * *
>
> Accordingly, I would conclude that even if it were appropriate to so extend the easement, Map File 1508[B] does not give the Defendants the right to use the easement for ingress and egress to its property.

Mr. Gratigny went on to state that *White Oak Realty v. Laurel Valley Invs., Inc.*, the Blount County Court case upon which the Defendants apparently rely to show an easement by agreement, did not include the Hollingsworth tract. We find that the Plaintiff met its burden of showing that there was no easement by agreement. The Defendants relied on their *interpretation* of the purported exclusive easement, rather than pointing to or providing additional evidence, among other things, to establish "the existence of disputed, material facts." *See* ***Staples***, 15 S.W.3d at 89 n.2 (citations omitted).

[6] The Defendants did not identify the case.

There are no disputed *material* facts on this issue. We will further address the Cooper Hollow Road later in this opinion.

B.

The Defendants next argue that the trial court erred in granting summary judgment against them because they have an easement by implication over the Plaintiff's roads in Laurel Valley.

Implied easements "are not favored in the law." ***Cole v. Dych***, 535 S.W.2d 315, 318 (Tenn. 1976). The party seeking to impose an implied easement bears the burden of proving "the existence of all facts necessary to create by implication an easement appurtenant to his estate." ***Line v. Miller***, 309 S.W.2d 376, 377 (Tenn. Ct. App. 1957); *see also* ***The Pointe, LLC v. Lake Mgmt. Assoc., Inc.***, 50 S.W.3d 471, 478 (Tenn. Ct. App. 2000). The following elements must be satisfied in order for an easement by implication to arise: "(1) A separation of the title; (2) [n]ecessity that, before the separation takes place, the use which gives rise to the easement shall have been so long continued and obvious or manifest as to show that it was meant to be permanent; . . . (3) [n]ecessity that the easement be essential to the beneficial enjoyment of the land granted or retained"; and (4) "continuous, as distinguished from temporary or occasional" servitude. ***Johnson v. Headrick***, 237 S.W.2d 567, 570 (Tenn. Ct. App. 1948). Tennessee does not have a rule of "strict or "absolute" necessity. ***Id.*** (quoting ***LaRue v. Greene County Bank***, 179 Tenn. 394, 166 S.W.2d 1044, 1049 (1942) (citations omitted)). Rather, for an easement to arise by implication, it must "be of such necessity that it must be presumed to have been within the contemplation of the parties." ***Id.***

The Defendants contend that RREC, during it's ownership of the property, used the Laurel Valley and the Cooper Hollow Road to access the Hollingsworth tract. The Defendants further contend that they have an easement by implication because their deed does not contain a "reference to a way of ingress and egress." As a result, according to the Defendants, "[t]here is no other route available to the Defendants to access their property." We agree with the Plaintiff that an easement by implication does not exist.

With respect to the "separation of title" element alluded to above, the parties agree that this element has been satisfied. A separation of title occurred when RREC sold the Hollingsworth tract to Mr. Hollingsworth.

With respect to the second element, we do not find that the use giving rise to the easement was "so long continued and obvious or manifest as to show that it was meant to be permanent." *See* ***Johnson***, 237 S.W.2d at 570. The alleged Laurel Valley easement is, at best, a dirt path. According to the affidavit of General Tiebout, the purported easements is an overgrown trail that is only suitable for "foot traffic." Mr. Heinshon also testified via deposition that the alleged Laurel Valley easement was not "passable by the trucks or vehicles." Instead, he claimed that it was suitable for "foot traffic" and was used as a "horse path."

Under the third element, the Defendants failed to show that an easement across Laurel Valley is essential for the beneficial enjoyment of the Hollingsworth tract. *See* ***id.*** The Defendants claim that "[t]here is no other route available . . . to access" their property. We find the Defendants' statement misleading. The Hollingsworth tract is also accessible via the Vananda tract. Mr. Hollingsworth admitted in his deposition that the Hollingsworth tract is located approximately one hundred feet from a county road that passes over a portion of the Vananda tract. Therefore, the third element is not satisfied.

The final element is similarly not satisfied. The Defendants' use of the claimed Laurel Valley easement was temporary or occasional and was not continuous. *See* ***id.*** Mr. Hollingsworth testified in his deposition that he has visited the Hollingsworth tract across Laurel Valley; however, we cannot find evidence in the record that the visits were continuous, as opposed to temporary or occasional. Mr. Gross similarly testified in his deposition that he used the easement in question approximately 25 times over the last 10 to 15 years. We believe that the Defendants' use of the purported Laurel Valley easement is, at best, occasional. Accordingly, we find that the remaining element was not established. Therefore, we hold that the Defendants do not have an easement by implication across the roads of Laurel Valley.

C.

The Defendants argue that the trial court erred in granting summary judgment against them because they have an easement by prescription.

A prescriptive easement arises when a person *acting under an adverse claim of right* makes uninterrupted, open, visible, and exclusive use of another's property for at least twenty (20) years with the owner's knowledge and acquiescence. ***Long v. Mayberry***, 36 S.W.1040, 1041 (Tenn. 1896) (citation omitted). "The procedure by which successive possessions are allowed to be combined to establish adverse possession is called tacking." ***Thompson v. Hulse***, E1999-02474-COA-R3-CV, 2000 WL 124787, at *3 (Tenn. Ct. App. E.S., filed Jan. 26, 2000). "Tacking requires that the combined periods be successive, that each possession must meet the elements of prescriptive easement, and that the possessions be in privity." ***Id.***

Without citing to the record, the Defendants claim that they, along with previous owners of the Hollingsworth tract, used the claimed easement to access the Hollingsworth tract. The Defendants further contend, without citing to authority, that "[b]y tacking together the use of this route by the consecutive owners of this land, more than enough time has elapsed to establish a prescriptive easement."

We find that the Defendant's reliance on the doctrine of prescriptive easement is misplaced. "Twenty years of adverse use is required to establish a prescriptive easement." ***McCammon v. Meredith***, 830 S.W.2d 577, 580 (Tenn. Ct. App.1991). At most, the Defendants used the purported easement for 10 to 15 years. We see no evidence in the record to show that the use by previous owners would satisfy the tacking requirement.

D.

The Defendants argue that the "Plaintiff[] seek[s] to disenfranchise [them] by expelling them from the Homeowners Association after Defendants have been accepted as members and have paid maintenance fees and/or dues subsequent to their purchase of the 108.49 acres." The Plaintiff argues that the Defendants failed to raise this issue at the trial level and that it "is raised inappropriately for the first time on appeal."

It is well-settled that "questions not raised in the trial court will not be entertained on appeal . . . ." ***Lawrence v. Stanford***, 655 S.W.2d 927, 929 (Tenn. 1983). At the appellate level, "we are limited in authority to the adjudication of issues that are presented and decided in the trial courts . . . ." ***Dorrier v. Dark***, 537 S.W.2d 888, 890 (Tenn. 1976). Therefore, we hold that the Defendants improperly raised this issue for the first time on appeal; therefore, we will not address it.

E.

The Defendants further argue that the trial court erred in granting summary judgment against them because the judgment entered in the 1998 case of *Laurel Valley Prop. Owners Ass'n v. Heinshon*, preserves their right to use the purported easement through Laurel Valley. In that case, the trial court conveyed the roads and rights-of-way in Laurel Valley to the Plaintiff from RREC. The Defendants contend that this judgment "alone, which preserves the rights-of-way and/or waives objections to the use of the LVPOA roads, should have been justification for denying Plaintiffs' [sic] motion for summary judgment." The Defendants rely on the following language, which they quote from the judgment, to support their assertion:

> RREC keeps and retains for itself, its successors and assigns, the permanent easement and right under and over all of said described roads and rights-of-way for access, egress, regress and crossing and access to all of the same and to all utility easements to any and all properties now owned by RREC.
>
> Any encroachments existing now on any right-of-way or easement or *involving prior sale of any real property* are waived by all parties hereto except that this provision in no way relieves or excuses any person from paying dues, fees or assessments for use of the roads.

(Emphasis added by Defendants)

The Plaintiff contends that "[t]he language relied upon by the Defendants appears to be a statement about the roads stating that 'all encroachments now on any right of way or easement or involving prior sale of any real property are waived by all parties hereto.'" The Plaintiff maintains that this language involved encroachments on the roads, not easements. The Plaintiff argues that

it "is utterly unwarranted, unsupported, and incomprehensible" for the Defendants to claim an easement under "language in a settlement document in 1998 to which the [they] were not a party."

We agree with the Plaintiff. We hold that the language upon which the Defendants rely is not sufficient to create a genuine issue of material fact as to whether the Defendants have a right to traverse or otherwise use the Plaintiff's roads on its property.

F.

The Defendants maintain that the Plaintiff does not have standing to file suit "to stop [them] from accessing Cooper Hollow Road . . . ." Cooper Hollow Road runs from the Hollingsworth tract across Cooper Hollow to the privately-owned Laurel Valley roads. The Defendants contend that the Plaintiff has admitted that it does not own Cooper Hollow Road. As a result, the Defendants argue that the Plaintiff does not have standing to block their access to Mr. Heinshon's property in Cooper Hollow.

"Standing is a judge-made doctrine used to determine whether a party is entitled to judicial relief." ***Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson County***, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). "To establish standing, a party must demonstrate (1) that it sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy that the court is prepared to give." ***Id.*** When analyzing standing, the court's primary focus is on the position of the party rather than the merits of the action. *See* ***id.***; *see also* ***Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.***, 454 U.S. 464, 484, 102 S.Ct. 752, 765, 70 L.Ed.2d 700 (1982).

The declaratory judgment relief sought with respect to Cooper Hollow Road is not the Plaintiff's to seek. The Plaintiff does not own the property in question. Therefore, we hold that the Plaintiff does not have standing to seek declaratory relief with respect to Cooper Hollow Road.

G.

The Defendants argue that the trial court erred in granting summary judgment against them because the Plaintiff has failed to plead a justiciable issue. Without supporting their argument with any authority, the Defendants contend that the

> Plaintiff[] allege[s] that the Defendants are involved in actions on Defendants' own property and asks the Court to prevent the Defendants from leaving the Defendants' own property by erecting a barrier on Defendants' property line. There is *no* allegation in the Amended and Restated Action for Declaratory Judgment that the Defendants have trespassed, damaged roads, interfered with security or engaged in any other act that was affecting [the Plaintiff].

(Emphasis in original).

The Plaintiff responded that it raised a justiciable issue because it owns "private roads that it wishes to protect from the unwarranted intrusion of unwanted traffic and security breaches from [the] Defendants['] 108[.49] acre tract." The Plaintiff contends that "[t]here is no requirement that the Association sit and wait until it is actually harmed by the Defendants' intended trespass before filing a declaratory judgment action."

We agree with the Plaintiff. In order for a justiciable issue to be raised, a real question rather than a theoretical one must be presented, and a real legally protectable interest must be at stake on the part of the plaintiff. ***Hester v. Music Vill. USA, Inc.***, 692 S.W.2d 426, 427 (Tenn. Ct. App. 1985). The purpose of a declaratory judgment action is to settle and grant relief with respect to the rights, status, and legal relations of parties. *See* Tenn. Code Ann. § 29-14-101 *et seq.*; *see also* ***State. v. Brown & Williamson Tobacco Corp.***, 18 S.W.3d 186, 193 (Tenn. 2000). In this case, the Plaintiff contended and established that the Defendants were taking steps to improve the alleged easement in order to access the Laurel Valley roads. As a result, the Plaintiff appropriately filed a declaratory judgment action for a determination on the parties' rights with respect to the purported easement.

H.

The Defendants argue that the trial court "exceeded its authority" in ordering them to erect a permanent barrier on their property to prevent entry onto Cooper Hollow Road. The Defendants contend that "[u]tilizing a portion of their property for a barrier as the Trial Court has decreed, amounts to a taking of property without due process."

Under the Fourteenth Amendment of the United States Constitution, no State shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Under Article I, § 8 of the Tennessee Constitution, "no man shall be . . . deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land." Furthermore, under Article I, § 21 of the Tennessee Constitution, "no man's particular services shall be demanded, or property taken, or applied to public use, without . . . just compensation being made therefor." Our "courts have held that these articles apply to the taking of private property for both public and private use." ***Barge v. Sadler***, 70 S.W.3d 683, 687 n. 4 (Tenn. 2002) (citing ***Cross v. McCurry***, 859 S.W.2d 349, 353 (Tenn. Ct. App. 1993) ("It has generally been held that the state does not have the power to authorize the taking of the property of an individual without his consent for the private use of another, even on the payment of full compensation.")); *see also* ***Alfred Phosphate Co. v. Duck River Phosphate Co.***, 120 Tenn. 260, 113 S.W. 410, 415 (1907).

We agree with the Defendants that the trial court's decree requiring them to place a barrier on their property amounts to an unjustified and uncompensated taking of their property. Furthermore, we find that the barrier was unjustified because the Plaintiff's property is nearly a mile away, and the barrier would prevent entry onto the property of Mr. Heinshon, a nonparty to this case. Therefore, we hold that the trial court erred as a matter of law in ordering the Defendants to erect a

barrier on their property. The Plaintiff may chose to erect a barrier at the edge of, and on, its property in order to preserve the security of the Laurel Valley development.

IV.

In summary, we hold (1) that the undisputed material facts show that the Plaintiff is entitled to summary judgment on its claim that the Defendants are not entitled to traverse or otherwise use the private roads of the Plaintiff; (2) that the Plaintiff is entitled to no relief with respect to its attempt to prevent the Defendants from traversing or otherwise using Cooper Hollow Road on property not owned by the Plaintiff; and (3) that the trial court erred in requiring the Defendants to erect a barrier on their property.

V.

The judgment of the trial court is affirmed in part and reversed in part. Exercising our discretion, we tax the costs on appeal 50% to the appellants, James P. Hollingsworth III, Sallie Hollingsworth, Tennessee Mountain Limited Partnership, Tennessee Greystone Limited Liability Company, Laurel Valley Investments, Inc., and Richard Gross; and 50% to the appellee, Laurel Valley Property Owners Association, Inc. This case is remanded to the trial court for the entry of an appropriate order, consistent with this opinion.

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CHARLES D. SUSANO, JR., JUDGE